

## STAFF REPORT

To: Planning and Economic Development Committee

Date: February 18<sup>th</sup>, 2014

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Real Estate Manager

Via: Gary Jackson, City Manager

Subject: Memorandum of Understanding with Duke Energy Progress  
for a property donation and construction agreement

Summary Statement: The consideration of a PED recommendation to the Asheville City Council regarding an MOU with Duke Energy Progress for the donation of 48 acres of real property at 98 Desota Street and a construction agreement for joint stormwater improvements.

Review: Duke Energy Progress (formerly known as Progress Energy of the Carolinas, and Carolina Power & Light) has offered to enter into a Memorandum of Understanding with the City for a real property donation and construction agreement. The overall partnership goals of the MOU are:

- Complete a land conveyance of Duke owned property at 98 Desota Street to the City to support the implementation of the French Broad River Greenway, and provide for a transmission line Right-of-Way for Duke Energy.
- Develop joint stormwater facilities to service both the transmission line access road and the greenway.
- Facilitate the regulatory permissions associated with the planning, design, and implementation of the utility and other public infrastructure, such as the greenway, parking and stormwater improvements, associated with the aforementioned property.

Duke owns approximately 48 acres of unimproved land along the French Broad River between the RiverLink Bridge and the French Broad River Park (identified as PIN 9638-92-3484 and shown on the attached map). Duke uses a portion of this property for transmission lines and plans to upgrade and relocate these lines within the parcel footprint. At this time, Duke has expressed interest in donating this parcel to the City, subject to an easement for the transmission line right-of-way.

If accepted, the City would utilize this parcel to connect the planned multi-use path at the New Belgium Brewing site to the existing greenway and park infrastructure at the French Broad River Park. The subject parcel is very steep and mostly riverfront, and an off-road multi-use path is likely the highest and best use for the parcel.

Both the transmission line relocation and the development of a city multi-use path would require the installation of stormwater improvements. Duke will present stormwater improvement plans to the city for approval, and will construct approved improvement during the transmission line rebuild project. Following the land transfer, the City will maintain those improvement, and in turn, Duke will provide a one-time fee for ongoing maintenance.

Given that the parcel is steep in some areas, the city greenway may include the development of retaining walls and other structures. Currently, certain Duke policies prohibit the development of retaining walls and other structures within Duke transmission line right-of-way. Within the terms of the MOU, Duke has agreed to work in good faith to resolve conflicts that may arise between

the greenway and transmission line right-of-way policies in a way that promotes and allows for greenway development along this parcel of real property.

As part of the MOU between Duke Energy Progress and the City of Asheville, the City agrees to work in good faith to support the company's effort to locate parcels for utility substation construction and associated transmission lines to support the growing electrical demands within the city.

The proposed MOU outlines the intent of the parties to enter into two contracts -- a Donation Agreement for Real Property and a Construction and Maintenance Agreement for the joint stormwater improvements. The MOU sets forth the responsibilities of each party to fulfill, and timeline for implementation.

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- Provides for multi-modal transportation along the French Broad River adjacent to the West Asheville Neighborhood and River Arts District
- Donation of land from Duke Energy Progress
- Financial partnership for the joint stormwater improvements and maintenance

Cons:

- Timeline for implementation of improvements must be coordinated with the City's budgetary process and CIP funding.

Fiscal Impact: The capital requirements for the project will be defined as an outcome of the architectural and engineering study. The funding for this project will be presented to Council as part of the budgetary process.

Suggested Recommendation: The PED Committee recommends the Asheville City Council to support the resolution authorizing the Mayor to enter a Memorandum of Understanding to accept a donation of real property from Duke Energy Progress and enter into a Construction and Maintenance Agreement for joint stormwater improvements.

Attachments:

(1) Map